

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

ALVIN ARNOLD,

Petitioner,

vs.

Case No. 2006-3460-AH

HUGH WOLFENBARGER (WARDEN),

Respondent.
_____ /

OPINION AND ORDER

Petitioner has filed a petition for a writ of habeas corpus.

Petitioner indicates that he is incarcerated at the Macomb Correctional Facility, which is located in Macomb County. Petitioner alleges that he was originally tried and convicted on the charges of premeditated murder in the first degree, contrary to MCL 750.316, felon in possession of a firearm, contrary to MCL 750.224f, and felony firearm, contrary to MCL 750.227b. Petitioner was jailed on these charges and because of probation violations, which petitioner avers stem only from the underlying felony charges. Petitioner alleges that his conviction was reversed and his case remanded by the Court of Appeals. Following a new trial, petitioner indicates that he was acquitted of all charges, and ordered immediately discharged from confinement.

MCR 3.303 provides that an action for habeas corpus may be brought by a prisoner in the county in which the prisoner is detained. The primary purpose of a habeas corpus proceeding is to cause the release of persons illegally confined and to inquire into the authority by which a person is detained. *Trayer v Kent County Sheriff*, 104 Mich App 32, 34; 304 NW2d 11 (1981)




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(citations omitted). Upon filing a complaint for habeas corpus, the court may issue a writ of habeas corpus directing the prisoner be brought before the court forthwith or an order to show cause why the writ should not be issued unless it appears that the prisoner is not entitled to relief. MCR 3.303(D). While the circuit court may issue writs of habeas corpus, it is without authority to review the conviction and sentence of petitioner by another trial judge by way of a writ of habeas corpus. *People v Price*, 23 Mich App 663, 670; 179 NW2d 177 (1970). If it appears from the face of the petition that the petitioner is not entitled to relief, the Court may dismiss the complaint without the personal presence of the petitioner. *Marchibroda v United States*, 368 US 487, 495; 83 S Ct 510; 7 L Ed 2d 473 (1961); *Curran v Shuttleworth*, 180 F2d 780, 781 (ED Mich, 1950).

In the case at bar, petitioner has provided this Court with an Order of Acquittal entered by the Wayne County Circuit Court. The Order unequivocally indicates that petitioner was acquitted on all charges in this case following a trial by jury. Moreover, the Order of Acquittal provides that petitioner be immediately discharged from confinement in this case. This Court is unaware of any other basis for petitioner's current confinement in the Macomb Correctional Facility. On the basis of petitioner's allegations and the Order of Acquittal, it is possible that habeas relief may be warranted in this matter.

For the reasons set forth above, respondent is ORDERED to show cause why petitioner should not be released from confinement. The Court further ORDERS that this show cause hearing be scheduled to take place within 24 hours of respondent's receipt of this Opinion and Order. Pursuant to MCR 2.602(A)(3), this Opinion and Order neither resolves the last pending claim nor closes the case.

IT IS SO ORDERED.


JOHN C. FOSTER, Circuit Judge

Dated: August 15, 2006

Cc: Alvin Arnold
Inmate #339150
Macomb Correctional Facility
34625 26 Mile Road
New Haven, Michigan 48048

Hugh Wolfenbarger
Warden
Macomb Correctional Facility
34625 26 Mile Road
New Haven, Michigan 48048